

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

FIRST SPECIAL SESSION
November 13, 2002 to November 14, 2002

ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

FIRST REGULAR SESSION
December 4, 2002 to June 14, 2003

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
FEBRUARY 13, 2003

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 13, 2003

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
2003

3. Rules. The commissioner may adopt rules to carry out the purposes of this section and to provide for increases in the minimum shell size of sea urchins after consultation with the Sea Urchin Zone Council. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

4. Penalties. The following penalties apply to violations of this section.

A. A person who violates this section commits a Class D crime for which a fine of not less than \$500 may be adjudged.

B. A person who violates this section after having previously violated this section commits a Class D crime for which a fine of not less than \$1,000 may be adjudged.

Fines imposed under this subsection may not be suspended.

Sec. 3. 12 MRSA §6749-O, sub-§5 is enacted to read:

5. Protection from depletion. The commission may adopt rules for sea urchin license limited entry system to prohibit a new entry in a year when it is necessary to protect or conserve the urchin fishery from imminent depletion.

Sec. 4. 12 MRSA §6749-R, sub-§1, as amended by PL 2001, c. 327, §15, is further amended to read:

1. Uses of fund. The commissioner shall use the fund for research directly related to sea urchin fishery management information needs and for reporting to licensed sea urchin harvesters, boat tenders, processors and buyers on the results of research and the use of fund revenues. The purpose of that research must be to determine, with the highest reliability possible given available resources, the greatest level of effort that may be applied to the sea urchin fishery without harming the long-term economic and biological sustainability of the sea urchin fishery. The commissioner shall consult with the Sea Urchin Zone Council under section 6749-X before deciding upon research projects and awarding grants from the fund. The fund may be used to provide for safety education and training requirements for the sea urchin fishery and to administer management measures for the fishery. The commissioner shall consult with the Sea Urchin Zone Council on the expenditure of funds for these purposes. The fund may also be used to cover the costs associated with determining eligibility for licenses under this subchapter, for law enforcement and support for the Sea Urchin Zone Council, including reimbursement for travel expenses.

Up to 30% of allotted revenues may be used for law enforcement purposes.

Sec. 5. Report. The Department of Marine Resources shall report to the joint standing committee of the Legislature having jurisdiction over marine resources matters on the implementation of this Act no later than January 1, 2005.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective May 16, 2003.

CHAPTER 201

S.P. 495 - L.D. 1489

An Act To Update and Amend the Revised Maine Securities Act

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 32 MRSA §10302, sub-§2, ¶B, as enacted by PL 1985, c. 400, §2, is amended to read:

B. A ~~sales representative~~ bona fide officer, director, partner or member of the issuer, or an individual occupying a similar status or performing similar functions, or a bona fide employee of the issuer who is acting for an issuer in effecting transactions in a security exempt by one or more paragraphs of section 10502, subsection 1, except paragraphs E, F, G, H, I and J;

Sec. 2. 32 MRSA §10302, sub-§2, ¶C, as amended by PL 1999, c. 279, §1, is further amended to read:

C. A ~~sales representative~~ bona fide officer, director, partner or member of the issuer, or an individual occupying a similar status or performing similar functions, or a bona fide employee of the issuer who is acting for an issuer effecting offers or sales of securities in transactions exempt by one or more paragraphs of section 10502, subsection 2, except paragraph S;

Sec. 3. 32 MRSA §10302, sub-§2, ¶D, as amended by PL 1991, c. 82, §1, is further amended to read:

D. A ~~sales representative~~ bona fide officer, director, partner or member of the issuer, or an individual occupying a similar status or performing similar functions, or a bona fide employee of the issuer who is acting for an issuer effecting transactions with existing employees, partners, offi-

cers or directors of the issuer, a parent or wholly owned subsidiary of the issuer, provided that no commissions or other remuneration are paid or given directly or indirectly to that person for soliciting any employee, partner, officer or director in this State; and

Sec. 4. 32 MRSA §10306, sub-§1, ¶A, as amended by PL 1993, c. 410, Pt. K, §3, is further amended to read:

A. Broker-dealer, \$200 ~~and for each branch of fee in this State, \$50;~~

Sec. 5. 32 MRSA §10306, sub-§1, ¶C, as amended by PL 2001, c. 183, Pt. A, §4 and affected by §14, is further amended to read:

C. Investment adviser, \$200; ~~and~~

Sec. 6. 32 MRSA §10306, sub-§1, ¶D, as enacted by PL 2001, c. 183, Pt. A, §5 and affected by §14, is amended to read:

D. Investment adviser representative, \$40-; ~~and~~

Sec. 7. 32 MRSA §10306, sub-§1, ¶E is enacted to read:

E. Each branch office in this State, as defined in subsection 3, \$50.

Sec. 8. 32 MRSA §10306, sub-§2, ¶A, as amended by PL 1993, c. 410, Pt. K, §4, is further amended to read:

A. Broker-dealer, \$200 ~~and for each branch of fee in this State, \$30;~~

Sec. 9. 32 MRSA §10306, sub-§2, ¶C, as amended by PL 2001, c. 183, Pt. A, §7 and affected by §14, is further amended to read:

C. Investment adviser, \$100; ~~and~~

Sec. 10. 32 MRSA §10306, sub-§2, ¶D, as enacted by PL 2001, c. 183, Pt. A, §8 and affected by §14, is amended to read:

D. Investment adviser representative, \$40-; ~~and~~

Sec. 11. 32 MRSA §10306, sub-§2, ¶E is enacted to read:

E. Each branch office in this State, as defined in subsection 3, \$30.

Sec. 12. 32 MRSA §10306, sub-§3-A is enacted to read:

3-A. Duplicate branch fees. Notwithstanding subsection 1, paragraph E and subsection 2, paragraph E, only one branch office fee is due if an office is a

branch office of both a broker-dealer and an investment adviser affiliated by direct or indirect common control.

Sec. 13. 32 MRSA §10306, sub-§4, as amended by PL 1989, c. 542, §16, is further amended to read:

4. Fees nonrefundable. If an application is denied ~~or~~ withdrawn or abandoned, or the license is terminated by revocation, cancellation or withdrawal, the administrator shall retain the fee paid.

Sec. 14. 32 MRSA §10308, sub-§1, as amended by PL 1989, c. 542, §18, is further amended to read:

1. Effective date of license. Unless a proceeding under section 10313 ~~has been~~ is instituted, the license of any broker-dealer, sales representative ~~or~~ investment adviser or investment adviser representative becomes effective 30 days after an application for licensing and the last of any additional information requested by the administrator or the administrator's designee has been filed and ~~provided that as long as~~ provided that as long as all examination requirements imposed under section 10307 ~~have been~~ are satisfied. The administrator may, by order, authorize an earlier effective date of licensing.

Sec. 15. 32 MRSA §10311, sub-§2, as enacted by PL 1985, c. 400, §2, is amended to read:

2. Sales representatives; investment adviser representatives. Licensing of the sales representatives of the broker-dealer or investment adviser representatives of the investment adviser filing the application under subsection 1 ~~shall continue~~ continues upon licensing of the successor and no separate filing or fee ~~shall be~~ is required for ~~the~~ their continued licensing ~~of the sales representatives.~~

Sec. 16. 32 MRSA §10313, sub-§7 is enacted to read:

7. Abandonment of license application. A pending license application may be considered abandoned if the administrator has not received a response to inquiries or deficiency notices for a period of at least 120 days. The administrator shall send an abandonment notice to the last known address of the applicant. The applicant must respond to the abandonment notice within 30 days to avoid an abandonment determination. The abandonment of an application does not preclude the filing of a subsequent application for licensure.

Sec. 17. 32 MRSA §10405, sub-§2, as amended by PL 1993, c. 410, Pt. K, §5, is further amended to read:

2. Fees. A person filing a registration statement must pay a filing fee of \$500 for each security offered, except that for a registration statement filed under section 10404 for an offering for which the total amount raised in state and out of state does not exceed \$1,000,000, the filing fee is \$300 for each security offered. When a registration statement is withdrawn before the effective date or abandoned pursuant to section 10406, subsection 5 or a preeffective stop order is entered under section 10406, the administrator retains the fee.

Sec. 18. 32 MRSA §10406, sub-§5 is enacted to read:

5. Abandonment of filing. A registration statement that is pending effectiveness may be considered abandoned if the administrator has not received a response to inquiries or deficiency notices for a period of at least 120 days. The administrator shall send an abandonment notice to the last known address of the filer. The filer must respond to the abandonment notice within 30 days to avoid an abandonment determination. The abandonment of a registration statement does not preclude the filing of a subsequent registration statement.

Sec. 19. 32 MRSA §10502, sub-§§8 and 9 are enacted to read:

8. Abandonment of exemption or notice filing. An exemption filing or notice filing required pursuant to this section may be considered abandoned if the administrator has not received a response to inquiries or deficiency notices for a period of at least 120 days. The administrator shall send an abandonment notice to the last known address of the filer. The filer must respond to the abandonment notice within 30 days to avoid an abandonment determination. The abandonment of a filing does not preclude the filing of a subsequent exemption filing or notice filing.

9. Fees nonrefundable. If an exemption filing or notice filing is withdrawn, abandoned, denied or revoked, the administrator shall retain the fee paid.

Sec. 20. 32 MRSA §10504, sub-§1, as amended by PL 1999, c. 279, §9, is further amended to read:

1. Filing of sales and advertising literature. The administrator, by rule or order, may require the filing of ~~any~~ a prospectus, pamphlet, circular, form letter, advertisement or other sales literature ~~or~~ advertising communication or business plan addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser, unless the security is a federal covered security or the security or transaction qualifies for an exemption under section 10502, subsection 2,

paragraphs A to R for which the filing of a notice with the administrator is not required.

Sec. 21. 32 MRSA §10505, sub-§4, as enacted by PL 1997, c. 168, §28, is repealed.

Sec. 22. 32 MRSA §10505, sub-§4-A is enacted to read:

4-A. Fees nonrefundable. If a notice filing required pursuant to this section is withdrawn, abandoned or the subject of a stop order, the administrator shall retain the fee paid. A notice filing may be considered abandoned if the administrator has not received a response to inquiries or deficiency notices for a period of at least 120 days. The administrator shall send an abandonment notice to the last known address of the filer. The filer must respond to the abandonment notice within 30 days to avoid an abandonment determination. The abandonment of a filing does not preclude the filing of a subsequent exemption or notice filing.

Sec. 23. 32 MRSA §10701, sub-§5, as amended by PL 1989, c. 542, §55, is further amended to read:

5. Disclosure for enforcement purposes. The administrator may disclose any information obtained in connection with an investigation pursuant to section 10601 that would otherwise be nonpublic information to the securities agencies and administrators specified in section 10702, subsection 1, but only if disclosure is required for the purpose of a civil, administrative or criminal enforcement investigation and the requesting agency certifies that under applicable law reasonable protections exist to preserve the integrity, confidentiality and security of the information, comparable to the protections existing under the laws of this State.

Sec. 24. 32 MRSA §10701, sub-§5-A is enacted to read:

5-A. Public disclosure for enforcement purposes. The administrator may disclose any information obtained in connection with an investigation pursuant to section 10601 that would otherwise be nonpublic information to the public, but only if the administrator determines that disclosure is necessary for the protection of investors or the public.

Sec. 25. 32 MRSA §10702, sub-§2, ¶H, as enacted by PL 1985, c. 400, §2, is amended to read:

H. Issuing and enforcing subpoenas at the request of a federal or another state securities agency or the United States Commodity Futures Trading Commission, if the activities constituting an alleged violation for which the information is sought would also be a violation of this Act if the activities had taken place in this State

~~and provided that any person against whom a subpoena may be issued shall have an opportunity for hearing before the subpoena is issued.~~

See title page for effective date.

CHAPTER 202

H.P. 1095 - L.D. 1502

An Act To Clarify the Exclusion of Assumed Reinsurance from Policy Claims Priority

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 24-A MRSA §4379, sub-§3, as amended by PL 2001, c. 88, §12, is further amended to read:

3. Loss claims. All claims under policies for losses incurred, including ~~third party~~ 3rd-party claims, and all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property that are not under policies, except the first \$200 of losses otherwise payable to any claimant under this subsection. All claims under life insurance policies and annuity contracts, whether for death proceeds, annuity proceeds or investment values, must be treated as loss claims. Claims may not be cumulated by assignment to avoid application of the \$200 deductible provision. That portion of any loss for which indemnification is provided by other benefits or advantages recovered or recoverable by the claimant may not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment made by an employer to an employee may be treated as a gratuity. Any provider or member claims for covered services under a health maintenance organization contract, including a point-of-service contract, not paid under subsection 1 are included in this class. Obligations of an insolvent insurer arising out of reinsurance contracts are excluded from this subsection.

See title page for effective date.

CHAPTER 203

S.P. 510 - L.D. 1522

An Act To Establish Fee Caps under the Maine Insurance Code

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 24-A MRSA §601, as amended by PL 2001, c. 47, §1, is further amended to read:

§601. Fee schedule

The superintendent shall collect, and persons so served shall pay to the superintendent, the fees, licenses and miscellaneous charges as follows set forth in this section. The superintendent may adopt rules establishing the fees and charges in different amounts from those specified under this section, except that the amount of any such fee or charge may not exceed the cap established in this section. In the absence of such rules, the maximum amounts set forth in this section apply. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

1. Certificate of authority. Insurer's certificate of authority fees ~~are~~ may not exceed:

A. For filing application for initial certificate of authority, including all documents submitted as part of the application. If an applicant requests deferral and new data filings respecting the application are required, a fee in equal amount is required upon the filing of the new information \$1,000;

B. Issuance, and each annual continuation \$100; and

C. Reinstatement, under section 415 \$350;

2. Charter documents, other than those filed with application for certificate of authority. The fee: for filing by an insurer for a reservation of a name; in addition to any other fee, a late filing of any information required to be filed by a licensee; registration of a branch location; and filing any amendment to certificate of organization, articles or certificate of incorporation, charter, bylaws, power of attorney, as to reciprocal insurers, and other constituent documents of the insurer ~~is~~ may not exceed \$25;

3. Annual statement. Filing annual statement of insurer, payable annually may not exceed \$100;

5. Producers. Producers' license and appointment fees ~~are~~ may not exceed:

A. Issuance fee for original resident producer license, including limited license \$30;

B. Appointment of resident producer, each insurer, health maintenance organization, fraternal benefit society, nonprofit hospital or medical service organization, viatical settlement provider or risk retention group \$30;